



June 21, 2000

Mr. Eric Magee
Staff Attorney
Legal and Compliance Division, MC 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR2000-2376

Dear Mr. Magee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136362.

The Texas Department of Insurance (the "department") received a written request for the "private passenger automobile rate and rule filing(s)" of two named county mutual insurance companies: Old American County Mutual ("American"), and Progressive County Mutual ("Progressive"). Your request does not address the responsive information of Progressive. To the extent the department owns or has a right of access to the information regarding Progressive that is responsive to the request, we assume you have released such information to the requestor. You have sought a decision from this office pursuant to section 552.305 of the Government Code as to whether the requested information of American is excepted from required public disclosure. You have provided this information for our review, and you indicate the information may be excepted from disclosure by section 552.110 of the Government Code. However, you make no arguments in support of the claimed exception.

In accordance with section 552.305, you notified a representative of American of the current records request and invited American to submit arguments to this office as to why the information at issue should not be released. American responded to the notice, stating its underwriting guidelines "are not subject to the Open Records Act and are not subject to Article 1.24 D of the Texas Insurance Code." American also asserts that the underwriting guidelines "contain proprietary and confidential information, which, if made public, could be used by competitors and could result in financial harm to our company." American makes no other arguments or representations as to why the information at issue should not be released.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We understand American's

statement that its underwriting guidelines are “not subject to the Open Records Act and are not subject to Article 1.24 D of the Texas Insurance Code” to essentially assert that the information at issue is made confidential under section 38.002 of the Insurance Code. This provision states in pertinent part:

(a) The department of the office of public insurance counsel may obtain a copy of an insurer’s underwriting guidelines.

(b) Underwriting guidelines are confidential, and the department or the office of public insurance counsel may not make the guidelines available to the public.

This office has previously determined, however, that the predecessor statute to section 38.002, former article 1.24D of the Insurance Code, does not apply to county mutual insurance companies. *See* Open Records Decision No. 653 (1997). Article 17.22(a) of the Insurance Code provides:

County mutual insurance companies shall be exempt from the operation of all insurance law of this state, except such laws as are made applicable by their specific terms or as in this Chapter specifically provided. In addition to such other Articles as may be made to apply by other Articles of the Code, county mutual insurance companies shall be subject to:

(1) Subdivision 7 of Article 1.10 of this Code; and

(2) Articles 1.15, 1.15A, 1.24, 2.04, 2.05, 2.08, 2.10, 4.10, 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49 of this Code.

In Open Records Decision No. 653, this office concluded that

[u]nder article 17.22(a), an insurance law applies to county mutual insurance companies in only two instances: (1) when the law itself so provides, or (2) when article 17.22(a) so provides. With regard to the first instance, we observe that [former] article 1.24D(a) is not made applicable to county mutual insurance companies by its own specific terms. With regard to the second instance, article 17.22 lists the Insurance Code provisions that apply to county mutual insurance companies. Article 1.24D, which makes confidential underwriting guidelines, is not on that list. [Footnote omitted.]

Open Records Decision No. 653 at 2-3 (1997). Similarly, we note that section 38.002 is not made applicable to county mutual insurance companies by its specific terms, nor is section 38.002 listed among the provisions in article 17.22 as being applicable to county mutual insurance companies. Accordingly, we conclude that the underwriting guidelines at issue

are not made confidential under section 38.002 and therefore may not be withheld under section 552.101 of the Government Code.¹

As noted above, however, the department contends that the information may be excepted from public disclosure under section 552.110 of the Government Code. Section 552.110 protects the property interests of private persons by excepting from disclosure two types of information: (1) trade secrets obtained from a person and privileged or confidential by statute or judicial decision, and (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See Gov't Code* § 552.110(a), (b).

As to section 552.110(a), this office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). Neither the department nor American asserts that the information at issue constitutes trade secret information. Because American has not established a *prima facie* case that the information at issue constitutes trade secret information, we have no basis for finding that the information is excepted by section 552.110(a).

As to section 552.110(b), American makes only conclusory assertions and does not otherwise explain how the release of the information at issue would cause American substantial competitive harm. To prevent disclosure of commercial or financial information pursuant to section 552.110(b), the party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure of its information. Because American makes only conclusory assertions, this office has no basis on which to conclude that the information of American is excepted from required public disclosure under section 552.110(b). As no other exceptions are asserted and no other arguments made for withholding the information at issue, we conclude the department must release the information in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

¹We note that the submitted information itself indicates that the program of American is administered and underwritten by AIG Specialty Auto ("AIG"). Apparently, AIG is not a county mutual insurance company. The underwriting guidelines of AIG are therefore presumably made confidential by the above-cited section 38.002 of the Insurance Code. However, because we are not advised whether the underwriting guidelines of American and AIG are identical, we have no basis for concluding that the information at issue is subject to section 38.002 of the Insurance Code.

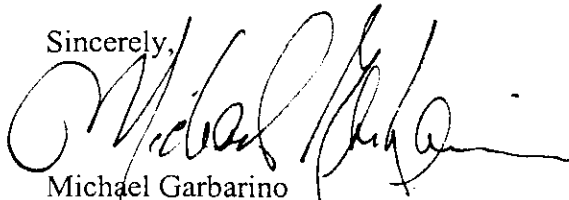
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ljp

Ref: ID# 136362

Encl. Submitted documents

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